Petition

81-495

No. .....

Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1981

Frederick A. Kaeli

Petitioner

vs

Malcolm Mckenzie, Et-Al

Respondents

Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Third Circuit

PETITION FOR CERTIORARI

Frederick A. Kaeli

Pro-Se
97 Maple Avenue
Red Bank, N.J. 07701
Tel. 201-747-5780
Petitioner

Printed in U.S.A.

QUESTIONS PRESENTED FOR REVIEW

1 Should the decision of the Federal District Court granting the defendants motion for dismissal of the complaint pursuant to Federal Rule of Civil procedure 12(B) (1), be granted.

2 Was the judgement order of the Court of Appeals proper in affirming the District Courts opinion order of dismissal.

3 Should the conspiracy part Title 42-1985 (a) and (b), be invoked RS 1980 Stat. 284 and Stat. 13. In the U.S. District Court should the Jurisdiction Title 42-2000 A-6-(a) and (b) Pub. L. 88-352 Title II 207 July 2, 1964 78 Stat. 245. be invoked in the U.S. District Court.

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In The

Supreme Court of the United States

October Term 1981

No. _____

Frederick A. Kaeli

Petitioner

vs

Malcolm Mackenzie Et-Al

Respondent

Petition for writ of Certiorari to the United States Court of Appeals for the third Circuit. Docket #80-2273

The petitioner, Frederick A. Kaeli, respectfully prays that a writ of certiorari issue to review the judgements of the United States Court of Appeals for the third Circuit entered on 21 April 1981.

OPINION BELOW

The Court of Appeals entered its judgement order affirming the judgement of the District Court. appendix a. The District Court order of dismissal appears as appendix b.

JURISDICTION

On April 22, 1981, the Court of Appeals entered a judgement order affirming the District Courts order of dismissal. Petitioner invokes the jurisdiction of this Court under Title 28 U.S. Code sect. 1254 (1) and conspiracy statutes Title 42 1985 (a) and (b) R-S-1980 Stat. 284 and Stat. 13, and jurisdiction Title 42 2000 A-6 (a) and (b) Pub-L 88-352 Title I 1-207 July 2, 1964. 78 Stat. 245.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V.

No Person shall be deprived of life, liberty or property, without due process of Law.

STATEMENT OF THE CASE

The District Court improperly claimed that there was no redress in the Federal Courts, alleging a conspiracy. Title 42 1985-(a) and (b) RS 1980 Stat 294 and Stat 13 is opposed to the District Courts opinion. When the District Court acquiesced to the defendant's motion for dismissal of complaint pursuant to Federal rule of Civil, procedure 12(b)-1, it erred as Title 42-2000 A-6 (a) and (b) Pub L 88-352 Title II 207 July 2, 1964 78 Stat 245. clearly show that petitioner is protected by this Statute.

On June 17, 1980, in the Federal District Court, in Trenton, N.J., before Judge Anne E. Thompson, Counsel for the Defendants was permitted to produce two Administrative stooges to witness against me. I view this action as a gross miscarriage of justice. Judge Thompson, rejected my plea of having a witness to verify my charge of conspiracy.

This is not equal justice under the law. If Judge Thompson, was fair in adjudicating my complaint of July 17, 1979, she would have permitted me to examine the thirty named defendants. This would show up my charge that conspiracy abounded.

REASON FOR GRANTING THE WRIT

This is unlike any other recorded case, and the statutes I have quoted should be sufficient evidence to grant the writ.

CONCLUSION

That the judgement order in the third circuit Court of Appeals rendered by chief Judge Seitz and circuit court Judges Aldisert and Gibbons, be reversed. Judgement order dated April 21, 1981 that the order of dismissal by Judge Thompson of District Court dated June 24, 1980, be reversed.

For the foregoing reasons, petitioner respectfully submits that a writ of Certiorari should issue to review the judgement of the United States Court of Appeals.

Appendix (a) Judgement order affirmed.
Appendix (b) District Courts Order of Dismissal.

Respectfully submitted,

Counsel for Respondents
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Tel. 201-747-5780
Petitioner

APPENDIX A.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 80-2273

FREDERICK A. KAELI,

Appellant

v.

CLIFFORD L. ALEXANDER, JR., Secretary of the Army, Malcolm MACKENZIE, John K. STONER, Jr., M.G. Commanding General, Harold STEIN, MARIETTA ONQUE, Robert WATTERSON, John DAVINO, Urban ZENTGRAF, Eugene COOK, Ltc. Col. Henry CUSHING, Ltc. Col. S.F. GUMBS, JR., Timothy HARPSTER, Earl GUMBS, Paul COLEMAN, Joseph P. MALONE, Vincent MELLACCI, Robert PARVIS, Richard BALMER, Herbert SCHWARZ, William ZUKOSKY, George BOSKO, Elizabeth WYCKOFF, Edward MATUSZEWSKI, Sgt. Bernard NUGETN, Sgt. Meredith COTE, Neil GINNETTI, Michael RUANE, George COYNE, David DICKSON, Coletta EPPS, John RADZIMINSKI

(Civil No. 79-02153 – D.N.J. – Trenton)

Submitted Under Third Circuit Rule 12(6)
April 21, 1981

BEFORE: SEITZ, Chief Judge, ALDISERT and GIBBONS, Circuit Judges

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JUDGMENT ORDER

After consideration of all the contentions raised by appellant, it is

ADJUGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

SEITZ

Chief Judge

Dated: April 22, 1981

ATTEST:

Sally Mrvos

Sally Mrvos
Clerk

APPENDIX B.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FREDERICK A. KAELI, *Plaintiff*	:	Civil No. 79-2153
v.		
MALCOLM MACKENZIE, et al., *Defendants*	:	ORDER OF DISMISSAL

For the reasons expressed in this Court's opinion dated June 13, 1980, it is on this the 24th day of June, 1980,

ORDERED that defendants' motion for dismissal of the complaint pursuant to Federal Rule of Civil Procedure 12 (b) (1) be and hereby is granted. No Costs.

ANNE E. THOMPSON, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FREDERICK A. KAELI,
Plaintiff

v.

MALCOLM MACKENZIE, et al.,
Defendants

Civil No. 79-2153

OPINION

THOMPSON, District Judge

Appearances:

Mr. Frederick A. Kaeli
97 Maple Avenue
Red Bank, New Jersey 07701
(Plaintiff, pro se)

Robert J. Del Tufo, U.S. Attorney
By: Jerome B. Simandle, Ass't. U.S. Attorney
P.O. Box 511
Trenton, New Jersey 08608
(Attorney for Defendants)

This matter comes before the Court upon defendant's motion to dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12 (b) (1). Plaintiff, Frederick Kaeli, a civilian employee of the United States Army Electronics Command at Fort Monmouth, New Jersey, instituted this suit under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S2000e-16.[1] The complaint alleged that plaintiff's civil rights had been violated and that money owing him had been illegally withheld. This Court's jurisdiction is invoked pursuant to 42 U.S.C. S2000e-5 (f) (3), S2000e-16 (c).

---

1. Plaintiff's complaint alleged discrimination generally and the existence of a conspiracy to deprive him of economic opportunity. By order dated April 8, 1980, this Court held that plaintiff's exclusive remedy is under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S2000e-16.

Defendant contends that this Court must decline to exercise subject matter jurisdiction over this action since plaintiff did not timely pursue and exhaust administrative remedies as required by Title VII. At a hearing held on June 17, 1980, this Court considered the issues of exhaustion and timeliness under the procedures outlined in Ettinger v. Johnson, 518 F.2d 648 (1975). This Court holds that plaintiff has not timely pursued or exhausted his administrative remedies and that the complaint must therefore be dismissed.

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2. This Section provides:

> (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies (other than the General Accounting Office) as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.
>
> (b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall —
>
> > (1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit an order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;
> >
> > (2) be responsible for the review and evaulation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and
> >
> > (3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to —

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 2000e-5 (f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

Plaintiff submitted the following evidence in support of his contention that he timely pursued and exhausted his administrative remedies:

Exhibit 1: Memorandum dated October 14, 1968 from Mr. Kaeli to W.B. Latta, Major General, Department of the Army ["DOA"]. In this memorandum, Mr. Kaeli raises several grievances commencing in 1959 regarding failure to promote, performance appraisals, suspensions, and general treatment at Fort Monmouth.

Exhibit 2: Letter dated March 17, 1969 to Mr. Kaeli from Bert Ganzer, Appeals Examiner, United States Civil Service Commission. In response to a letter by Mr. Kaeli dated March 17, 1969, this letter informs Mr. Kaeli that the Commission could not review his grievance and suggests that Mr. Kaeli pursue his grievance in accord with DOA's procedures.

Exhibit 3. Opinion of Herbert W. Schwaz, Grievance Examiner, Fort Monmouth, dated August 26, 1969. As to Mr. Kaeli's grievances, the Opinion holds that the officials followed proper procedures in selecting candidates for the position in which Mr. Kaeli was interested. Fragmentary evidence was uncovered, however, tending to support Mr. Kaeli's contention that the selection procedure was "rigged." The Examiner recommended that Mr. Kaeli be relocated to a position with the potential for growth and be permitted to take a "Computing Systems Fundamentals" course.

Exhibit 4: Letter dated January 6, 1970 to Mr. Kaaeli from Robert J. Drummond, Jr., Regional Director, United States Civil Service Commission. In response to a letter by Mr. Kaeli dated December 11, 1969 complaining of Examiner Schwaz's decision, this letter informs Mr. Kaeli that a decision of Headquarters, U.S. Army Material Command, dated November 13, 1969, is a final decision. This letter further reaffirms Mr. Ganzer's letter explaining that the Civil Service Commission did not have authority to review Mr. Kaeli's grievances.

Exhibit 5: Letter dated September 30, 1974 from Thomas Daniels, President of local union, to the Secretary of the Army. Letter complains of a psychiatric appointment the Army apparently scheduled for Mr. Kaeli.

Exhibit 6: New York Times article.

Exhibit 7: Letter dated May 31, 1979 to Mr. Kaeli from Cameron C. Smith, Acting Director of Appeals Review, Merit Systems Protection Board. In response to Mr. Kaeli's appeal of decision of New York Field Office affirming a one day suspension of Mr. Kaeli, this letter informs Mr. Kaeli that he has no further right of appeal and that any further remedy lies in the Court system.

Exhibit 8: Letter dated May 31, 1979 to Mr. Kaeli from Lynn R. Collins, Assistant Special Counsel, Office of Special Counsel. Letter states that Mr. Kaeli may file complaint regarding prohibited personnel practices with Office of Special Counsel.

Defendant submitted the following documents in support of his positions that plaintiff did not timely pursue and exhaust his administrative remedies:

Exhibit 1: Equal Employment Opportunity ["EEO"] Policy of Fort Monmouth.

Exhibits 2-4: Photographs of EEO Counselors.

Exhibits 5-7: EEO Plans of Action for 1976, 1977, and 1979 at Fort Monmouth.

Exhibit 8: Letter dated January 29, 1970 to Mr. Kaeli from Ermon K. Jones, EEO Officer. Letter informs Mr. Kaeli that Mr. Jones would accept a complaint of discrimination based on race, color, religion, sex, or national origin.

Exhibit 9: Affidavit of Jerome Simandle with the following exhibits attached:

Exhibit a: Letter dated May 25, 1978, from SFC Meredith F. Cote to Mr. Kaeli, informing Mr. Kaeli of proposal to suspend Mr. Kaeli for one day for impertinence and insubordination to supervisors.

Exhibit b: Letter dated June 1, 1978 from Mr. Kaeli to SFC Cote, responding to May 25, 1978 letter.

Exhibit c: Disposition Form dated June 5, 1978, from SFC Meredith F. Cote to the Finance & Accounting Officer, indicating receipt of Mr. Kaeli's reply letter dated June 1, 1978, and finding proposed suspension to be warranted, attaching Exhibits thereto.

Exhibit d: Memorandum dated June 7, 1978, from LTC S.F. Gumbs, Jr., concurring in request for disciplinary action.

Exhibit e: Memorandum dated June 8, 1978 and June 9, 1978, from Joseph P. Malone and Neil R. Ginnetti, respectively, concurring in request for disciplinary action.

Exhibit f: Letter dated June 15, 1978, from SFC Meredith F. Cote to Mr. Kaeli amending letter dated May 25, 1978.

Exhibit g: Letter dated June 21, 1978 from Neil R. Ginnetti, Acting Comptroller, to Mr. Kaeli, informing Mr. Kaeli that the one day suspension has been found to be warranted and that the effective date will be June 26, 1978, and attaching "Notification of Personnel Action, Standard Form 50" and "Appeal and Grievance Rights."

Exhibit h: Letter dated June 30, 1978 from Mr. Kaeli to John E. Selbmann, Chief Appeals Officers, Federal Employee Appeals Authority ["FEAA"], appealing one-day suspension.

Exhibit i: Decision dated September 18, 1978, by John E. Selbmann, Chief Appeals Officer, FEAA, on appeal of Mr. Kaeli, affirming the one day suspension.

Exhibit j: Letter dated September 18, 1978, from John E. Selbmann, FEAA, transmitting copy of decision to Mr. Kaeli and the Director of Civilian Personnel.
Exhibit k: Letter dated May 31, 1979, from Office of Appeals Review, Merit Systems Protection Board, to Mr. Kaaeli, denying Mr. Kaeli's request to reopen FEAA decision dated September 18, 1979.

The Court heard extensive oral testimony as well. Ermon K. Jones, EEO Counselor at Fort Monmouth, testified that EEO Plans of Action, photographic displays of EEO Counselors, and EEO policy statements describing the procedural requirements for initiating civil rights actions were made available to all Fort Monmouth personnel. Mr. Jones detailed the procedures for distributing and exhibiting these materials to all employees. Mr. Jones knew Mr. Kaeli personally. Mr. Jones testified that he was unaware of any EEO complaint filed by Mr. Kaeli and would have been informed had such a complaint been filed. Finally, Mr. Jones testified that he advised Mr. Kaeli so as to make him "fully aware of the procedures and time limitations for processing a complaint of discrimination."

Mr. Kaeli, testifying, did not dispute Mr. Jones's testimony. He conceded that he "had no leg to stand on" with respect to the Title VII claims of discrimination. He insisted, however, that the crucial issue was the alleged conspiracy and deprivation of economic opportunity. He described in detail various aspects of the conspiracy dating back to 1960. In sum, Mr. Kaeli conceded that he had neither exhausted nor timely pursued his administrative remedies but maintained nonetheless that the non-Title VII aspects of this litigation were the crux of the matter and should survive defendant's motion to dismiss.

II

We turn first to the question whether plaintiff has exhausted his administrative remedies. It has long been the general rule that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938). Federal employees bringing Title VII actions are subject to the exhaustion requirement. Ettinger v. Johnson, 518 F.2d 648 (3rd Cir. 1975). Plaintiff, then, must have exhausted his administrative remedies in order to maintain this suit.

Upon review of the evidence presented, however, I find that plaintiff has exhausted his administrative remedies with respect to the following two complaints only:

1) Final decision of Headquarters, U.S. Army Material Command, affirming findings of Grievance Examiner (Plaintiff's Exhibit 3), as evidenced by Plaintiff's Exhibit 4 ("1968-1970 grievances").
2) Final decision dated September 18, 1978 by Federal Employee Appeals Authority ["FEAA"], affirming one day suspension of June 26, 1978, as evidenced by Plaintiff's Exhibit 3.

Plaintiff presented evidence with respect to only one other complaint — the scheduling of a psychiatric appointment for Mr. Kaeli (Plaintiff's Exhibit 5). Neither this letter nor any other evidence presented signalled that administrative remedies were exhausted with respect to this complaint. Accordingly, I hold that the complaint must be dismissed as to all counts except the two counts mentioned above with respect to which plaintiff exhausted his remedies.

III

I turn next to the question whether the two remaining counts of the complaint must be dismissed for failure to allege at any time in the relevant administrative process the issue crucial to the maintenance of the case at bar — discrimination based upon race, color, religion, sex, or national orign.

The exhaustion requirement has been read to bar district court consideration of issues not raised in an administrative proceeding. Ettinger v. Johnson, supra at 652 & n.9. Plaintiff concedes, however, that he never pursued his administrative remedies with respect to Title VII because, in his view, this is not a Title VII action. The documents plaintiff submitted cast no doubt on the contention that plaintiff never raised in administrative proceedings any claim based upon race, color, religion, sex, or national origin. The remaining counts of plaintiff's complaint must therefore be dismissed.

IV

The remaining counts of the complaint must be dismissed for yet another reason: Plaintiff has not satisfied the jurisdictional prerequisites to the maintenance of a Title VII suit.

Section 717 (b) and (c) of Title VII establish complementary administrative and judicial enforcement mechanisms designed to eradicate federal employment discrimination.

> Section 717 (c) permits an aggrieved employee to file a civil action in a federal district court to review his claim of employment discrimination. Attached to that right, however, are certain preconditions. Initially, the complainant must seek relief in the agency that has allegedly discriminated against him. He may then seek further administrative review with the Civil Service Commission or, alternatively, he may, within thirty days of receipt of notice of the agency's final decision, file suit in federal district court without appealing to the Civil Service Commission. If he does appeal to the Commission, he may file suit within thirty days of the Commission's final decision. In any event, the complainant may file a civil action if, after 180 days from the filing of the charge or the appeal, the agency or civil service commission has not taken final action.

Brown v. General Services Administration, 425 U.S. 820, 831-32 (1976).

As to plaintiff's 1968-1970 grievances, plaintiff did not timely institute suit in the federal district court. The courts have held that no effective right of judicial review was available for federal employees prior to the enactment of the 1972 amendments to Title VII. Brown v. General Services Administration, supra at 828-29. The right to judicial review became available only to those employees having administrative claims pending at the time of the 1972 amendments. Eastland v. Tennessee Valley Authority, 553 F.2d 364 (5th Cir. 1977), cert. denied 434 U.S. 985. Cf. Brown v. General Services Administration, supra at 824, declining to disturb lower court's ruling that the 1972 amendments were retroactive for federal employees who had claims pending on March 24, 1972. However, even if the amendments giving federal employees the right to sue had full retroactive effect, an employee is precluded from asserting his rights under the amendments where the action was not filed within thirty days after the amendments went into effect. Clark v. Goode, 499 F.2d 130 (4th Cir. 1974). Plaintiff did not insititute suit until July 16, 1979, more than thirty days after the 1972 amendments went into effect. The requirement that suit be filed by an aggrieved federal employee within thirty days of receipt of notice of the agency's final decision and thus within thirty days of the effective day of the 1972 amendments is jurisdictional in nature and cannot generally be waived. Fuqua v. Robinson, 398 F. Supp. 681 (D.N.J. 1975). Cf. Brown v. General Services Administration, supra. The counts of plaintiff's complaint that address his 1968-1970 grievances must therefore be dismissed.

As to plaintiff's 1978 suspension, an action on this ground is barred because plaintiff did not satisfy the preconditions to institute suit in federal court — properly seeking review in the agency that allegedly discriminated against him. See generally Brown v. General Services Administration, supra. To seek administrative relief an aggrieved federal employee "who believes that he has been discriminated against because of race" must complain to an EEO counselor within thirty days of the alleged discriminatory act pursuant to 5 C.F.R. S713.213 (a) (1978).[3] If the EEO counselor fails to resolve the matter to the grievant's satisfaction, the grievant may file his written EEO complaint within 15 days after his or her final interivew with the EEO counselor pursuant to 5 C.F.R. S713.214 (a) (1) (1978).[4] Compliance with these requirements are conditions to the maintenance of a Title VII action. Ettinger v. Johnson, supra; Henry v. Schlesinger, 407 F. Supp. 1179 (E.D. Pa 1976).

Once again, plaintiff's own testimony, corroborated by that of Mr. Jones, establishes that plaintiff never complained of prohibited discrimination to an EEO counselor nor filed an EEO complaint. There can be no doubt that plaintiff's failure to comply with these requirements cannot be excused because of plaintiff's ignorance of the applicable limitations periods. See Ettinger v. Johnson, supra at 652. Henry v. Schlesinger, supra at 1154. The count of plaintiff's complaint addressing the 1978 suspension must therefore be dismissed.

3. 5 C.F.R. S713.213 (1978) provided in pertinent part:

Precomplaint processing.

(a) An agency shall require that an aggrieved person who believes that he has been discriminated against because of race, color, religion, sex or national origin consult with an Equal Employment Opportunity Counselor when he wishes to resolve the matter. The Agency shall require the Equal Employment Opportunity Counselor to make whatever inquiry he believes necessary into the matter; to seek a solution of the matter on an informal basis; to counsel the aggrieved person concerning the issues in the matter; to keep a record of his counseling activities so as to brief periodically, the Equal Employment Opportunity Officer on those activities; and, when advised that a complaint of discrimination has been accepted from an aggrieved person, to submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the agency and the aggrieved person concerning the issues in the matter . . .

4. 5 C.F.R. S713.214 (a) (1) (1978) provided:

Filing and presentation of complaint.

(a) Time limits. (1) An Agency shall require that a complaint be submitted in writing by the complainant or his representative and be signed by the complainant. The complaint may be delivered in person or submitted by mail. The agency may accept the complaint for processing in accordance with this subpart only if —

(i) The complaint brought to the attention of the Equal Employment Opportunity Counselor the matter causing him to believe he had been discriminated against within thirty (30) calendar days of the date of that matter, or, if a personnel action, within thirty (30) calendar days of its effective date; and

(ii) The complainant or his representative submitted his written complaint to an appropriate official within fifteen (15) calendar days of the date of his final interview with the Equal Employment Opportunity Counselor.

V

We are mindful that the procedural requirements in the Title VII area are neither interpreted too technically nor applied too mechanically "since lay persons initiate the often complex process of resolving employment discrimination complaints." Richerson v. Jones, 572 F.2d 89, 95-96 (3rd Cir. 1978). This laxity in applying Title VII's procedural requirements is designed to protect unsophisticated lay persons who do not bypass the administrative process or frustrate the statutory purpose preferring conciliation but simply fall to comply perfectly with technical procedural requirments. Id. In this case, however, plaintiff's own testimony establishes not only that plaintiff bypassed the entire administrative process but that his suit is not one involving prohibited discrimination; by plaintiff's own admission, this case is one alleging a conspiracy to deprive plaintiff of economic opportunity. This is a claim for which the federal courts can provide no redress. The complaint must therefore be dismissed.

The Court will enter an appropriate order.

June 23, 1980